

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

J. Andrew McKamie, DDS, d/b/a)
Center for Exceptional Dentistry,)
)
 Plaintiff,)
) Case No.
-vs-) CIV-13-173-C
)
PATTERSON DENTAL SUPPLY, INC.,)
)
 Defendant.)

DEPOSITION OF J. ANDREW MCKAMIE, DDS

TAKEN ON BEHALF OF THE DEFENDANT

ON SEPTEMBER 13, 2013

IN OKLAHOMA CITY, OKLAHOMA

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1 STIPULATIONS

2

3 It is hereby stipulated and agreed by and
4 between the parties hereto, through their
5 respective attorneys, that the deposition of

6 J. Andrew McKamie, DDS, may be taken on behalf
7 of the Defendant on September 13, 2013 in
8 Oklahoma City, Oklahoma by Chrystal H. Vance,
9 Certified Shorthand Reporter for the State of
10 Oklahoma, pursuant to the Federal Rules of Civil
11 Procedure.

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* * * *

1 Q. Okay. So in 1982, you were about
2 25-years-old, something like that?

3 A. Twenty-six, I believe.

4 Q. And while you were in school, did you
5 have any significant employment, other than -- you
6 know, I'm not counting like being a waiter or
7 something to make money, but, you know, did you do
8 anything else or were you pretty much just a
9 student?

10 A. Student. But I refereed and umpired.

11 Q. Okay.

12 A. And worked in the summers.

13 Q. So have you basically been a dentist now
14 for 31 years?

15 A. That's correct.

16 Q. When you started after dental school, did
17 you work for someone else or some other clinic?

18 A. I did not.

19 Q. So you immediately went into private
20 practice?

21 A. I did.

22 Q. Did you have a partner or anything in the
23 beginning or other associates?

24 A. I did not.

25 Q. When you started, were you the person who

1 signed the leases, signed the contracts, and did
2 all that stuff?

3 A. That's correct.

4 Q. Has that always been the case? Have you
5 sort of always been the -- in addition to being
6 one of the practitioners, you've been sort of the
7 chief operating officer, if you will?

8 A. That's correct.

9 Q. When did you first start having
10 associates approximately?

11 A. The first associate was Dr. Bill Kohs,
12 but I -- I'd have to say in the early 90's,
13 maybe. That's a guess. That's --

14 Q. So prior to that time, it was just you
15 and maybe a hygienist or receptionist or something
16 like that?

17 A. Correct.

18 Q. And was Dr. Bill Kohs like a partner or
19 was he more of someone who worked for you?

20 A. Worked for me.

21 Q. At what time did you establish the name,
22 Center for Exceptional Dentistry? Is that the
23 name in which you practice under?

24 A. That's correct.

25 Q. When was that established?

1 Q. Had you had dealings with Patterson
2 Dental prior to the transaction that, you know,
3 we're going to be talking about today? I mean,
4 had you been buying other supplies from them?

5 A. For a number of years, they were my
6 primary supply company.

7 Q. So --

8 A. I couldn't tell you the years, but it was
9 for -- it was more than a couple. It was a number
10 of years there that -- I forgot Emily's last name,
11 but she was my sales rep for Patterson's.

12 Q. And so I'm going to start showing you
13 documents before long that start in 2007, the Fall
14 of 2007. So as of the Fall of 2007, were you, at
15 that point, did you consider Patterson sort of
16 your regular supplier?

17 A. I did not.

18 Q. Okay. What -- what was the period where
19 Patterson was the regular supplier? Was it
20 sometime prior to that?

21 A. It was prior to that, yes.

22 Q. Okay. And can you give me an
23 approximate? It was the 80's? It was in the
24 90's? It was something else?

25 A. I built my office in 1996 range there.

1 superstore. Anything that a dentist might want,
2 they hopefully provide --

3 MR. LOYD: I would object to the form
4 of the question as being leading.

5 Q. (By Mr. Gust) Do you understand my
6 question?

7 A. Can you repeat?

8 Q. Sure.

9 A. Either that or the one before and I'll
10 answer --

11 Q. Yeah, no, it's -- so Patterson Dental is
12 basically -- just to be clear, they are -- they
13 don't manufacture their products as far as you
14 understand, correct?

15 A. I see them as representing products,
16 selling sundries, mainly, but also products and
17 equipment of manufacturers.

18 Q. Of other manufacturers?

19 A. I would say, yes.

20 Q. And is that the case with the CEREC
21 products? And CEREC is C-E-R-E-C.

22 A. Can you explain, "Is that the case as far
23 as" --

24 Q. Well, so somebody else may actually
25 manufacture CEREC. Patterson is just a sales

1 can't recall.

2 Q. Would that meeting have been -- or that
3 class been relatively close in time to Fall of
4 2007?

5 A. Definitely, yes.

6 Q. Okay. So then is that the -- sort of
7 your first introduction to CEREC?

8 A. First detailed introduction to it, yes.

9 I was familiar with the technology, but not in
10 detail. And that's why I attended.

11 Q. Where was that meeting or presentation
12 held, if you remember?

13 A. It was at Patterson's offices. I
14 couldn't tell you the -- I believe, and not
15 certain, that it was once they moved up to the --
16 towards Edmond site.

17 Q. How big of an event is that -- was that,
18 do you remember? I mean, is it like an auditorium
19 full or is it, you know, five people around the
20 table or something else?

21 A. Definitely not an auditorium full. It's
22 doctors and maybe team members around a table, but
23 I would've said less than 20. And that's just a
24 guess. But that type of setting.

25 Q. So is it fair to assume that that was in

1 2007?

2 A. I believe it was, but I'm not certain.

3 Q. What was your -- what's the next contact
4 you remember with Mr. Stephenson or anyone else at
5 Patterson regarding CEREC?

6 A. I don't know if it was actually the next
7 -- the next contact I remember is an in-office
8 demonstration.

9 Q. And that's in your office?

10 A. Uh-huh.

11 Q. That's a "yes?"

12 A. Yes.

13 Q. Do you recall who did that?

14 A. I know Matt Stephenson was present. I'm
15 not certain whether anyone else from Patterson was
16 present or not. There could have been.

17 Q. So how long does that process take, the
18 in-office demonstration?

19 A. As far as how many hours it takes?

20 Q. Right.

21 A. Under two hours. I don't know whether we
22 spent an hour or two, but maybe two hours I would
23 think.

24 Q. At that point, that's before you commit
25 to buy anything. That's just to bring it out to

1 A. Yes. On that acquisition, there is a
2 camera, also, that's on that. And you do take --
3 you use that camera to take a picture of the
4 teeth.

5 Q. And then the other, the milling unit, why
6 don't you tell me, for the record, what that
7 does.

8 A. It actually takes the information, inputs
9 into that acquisition unit, and then fabricates,
10 out of a block of porcelain, a tooth or crown
11 that's to be put on a patient's actual tooth
12 that's needing a crown.

13 Q. And that tooth that it -- it does, is
14 that a temporary or a permanent?

15 A. A permanent.

16 Q. So I just had these done. I know it's
17 hard to get on the record.

18 A. They look nice. I will tell you that.
19 They look nice.

20 Q. I think they actually -- they might even
21 be a little too white, but -- I had temporary and
22 then a permanent. Is that the idea behind the
23 CEREC? You just do it once rather than having to
24 have a temporary and a permanent? Is that kind of
25 the draw of that?

1 A. It's one of the draws, but many doctors
2 do it in two appointments like regular.

3 Q. Even with the CEREC you mean?

4 A. Yes.

5 Q. What would be the reason for doing that?

6 A. Time-saving, improving the quality
7 -- some will argue there's time-saving on the
8 other end of it. But to be able to take your time
9 and mill it in the evenings or have someone else,
10 and then bring the patient back for a second
11 appointment to deliver.

12 Q. In any event, you're still eliminating
13 sending it to a lab somewhere else, is that
14 correct?

15 A. That's correct.

16 Q. So this in-office demonstration, that was
17 like a follow-up or a result of the meeting you
18 went to?

19 A. That's my recollection of it.

20 Q. What was the next interaction you had
21 with Patterson or Mr. Stephenson?

22 A. I remember there being a follow-up by
23 Matt about placing an order. And it would have
24 been the next.

25 Q. Do you recall if that was in person or by

1 the phone or something else?

2 A. I don't recall. I believe it was in
3 person.

4 Q. Do you recall how that was resolved? I
5 mean, did you decide to order it then or was there
6 -- was this part of a longer process?

7 A. I actually declined to order then and
8 wanted to wait until after the first of the year.

9 Q. Was that just kind of a cash-flow issue
10 or something else that you wanted to wait until
11 after the first of the year?

12 A. I'm not certain if it was a cash-flow
13 issue. Just wanted to wait until after the first
14 of the year to order. Sit on the idea and see how
15 it incorporated.

16 Q. So after the first of the year, would
17 have been in the beginning of 2008?

18 A. That's correct.

19 Q. So what was the next meeting you had with
20 Mr. Stephenson or someone else from Patterson?

21 A. The next meeting was over the phone with
22 Steve Hipson, the branch manager.

23 Q. What -- do you -- who called whom in
24 that?

25 A. Mr. Hipson called me is my recollection.

1 Q. What was the substance of that
2 communication?

3 A. It was that he had already ordered my
4 CEREC.

5 Q. What was his explanation for why he had
6 done that?

7 A. Out of expectations that I was going to
8 purchase the CEREC.

9 Q. All right. He wasn't telling you that he
10 felt you were contractually committed to buying
11 it. Just that he -- he was so sure you were going
12 to want it that he was ordering so it would be
13 ready when you did?

14 A. That's correct.

15 Q. Okay. So what did you say to that?

16 A. I said I wanted to wait until after the
17 first of the year.

18 Q. Okay. And what was his response?

19 A. He really just wouldn't take "no" for an
20 answer.

21 Q. And so did that mean on that phone call
22 he got a "yes" for an answer?

23 A. He informed me that they were just trying
24 to do me a favor is what I recall. And that to
25 get my machine ready here. He also let me know

1 that they would have to pay taxes on unsold
2 equipment. It would cost them, what I believed he
3 said, was thousands of dollars. And that he just,
4 as I said, wouldn't take "no" for -- and it was
5 just heavy pressure. And I caved under the 100
6 percent guarantee, pretty much.

7 Q. So that was during that phone call is
8 when you said you would go ahead and do it?

9 A. I believe it was.

10 Q. Okay. As you sit here now, do you
11 remember the month or the date?

12 A. I don't. I mean, I do know it was before
13 the 2008 turned around, so it had to have been in
14 the last couple of months of 2007.

15 Q. So as a result of your telephone
16 conversation, did you, then, execute documents?

17 A. Some time after that, yes.

18 Q. Do you remember how long after that?

19 A. I don't remember how long, but I wouldn't
20 have thought it would have been a long period of
21 time.

22 Q. During that discussion or your prior
23 discussions with Mr. Stephenson, had there been
24 discussions about financing?

25 A. Not that I recall.

1 things, just up until this point that we've gotten
2 to chronologically.

3 A. And can you tell me what this point
4 exactly that we're talking about here?

5 Q. Well, it's the phone call with Steve
6 Hipson.

7 A. Phone call with Steve Hipson? I can't
8 recall whether when Matt was doing his follow-up,
9 whether he discussed that, but my recollection
10 would be, no. And it would be afterwards.

11 Q. Okay. And so from what I understand, I
12 want to make sure I understand what you're saying,
13 during this phone call you basically gave in and
14 said, okay, I will buy it. And then the paperwork
15 came afterwards? That's your recollection?

16 A. That's my -- my recollection along with
17 the guarantee that was brought in, like almost a
18 no-lose situation.

19 Q. Okay. But from what -- from what I've
20 understood from your testimony was you signed
21 documents after this phone call.

22 A. That's my recollection.

23 Q. All right. Let me -- let me show you a
24 document and see if we can get some timeframe on
25 some of this. I'm not trying to test your memory

1 trust my -- the person I'm working with and may
2 scan it, but I don't research it and read it in
3 detail, no.

4 Q. Understood. Let me ask you, on the page
5 where your signature is, on the second page, at
6 the top, the top paragraph -- and I'm not sure --
7 I think that this copy had been two-hole punched,
8 so there's a little bit of a gap, but I think I
9 can read it. So I'm going to read it into the
10 record.

11 "CEREC Return Policy. In the event of
12 return, the purchaser will be responsible for the
13 cost of basic training and installation kit valued
14 at \$4,000. Additionally, purchaser will be
15 responsible for the depreciation of the equipment
16 calculated at 2 percent of the original purchase
17 price per month."

18 All right. Now, as I said, there's some
19 gaps where there's a two-hole punch, but do you --
20 first of all, did that seem to be an accurate
21 reading of that?

22 A. Of what you just read to me?

23 Q. Yes.

24 A. That seems like an accurate reading.

25 Q. Do you recall ever reading that language

1 on any document in connection with this case?

2 A. I do not.

3 Q. Do you recall ever discussing that
4 Patterson policy with anybody?

5 A. I do not.

6 Q. Do you recall what Patterson's return
7 policy was with respect to other equipment during
8 -- either at this time or back in the 90's when
9 they provided all your supplies?

10 A. I do not.

11 Q. Is it typical with your -- strike that.

12 Are you still using the same supplier
13 that you identified before that you started using
14 after Patterson? The --

15 A. For the sundries and equipment?

16 Q. Yeah.

17 A. Yeah, for the most part.

18 Sullivan-Schein.

19 Q. And -- but did they also sell equipment?

20 A. They do.

21 Q. Have you bought any equipment from them?

22 A. Maybe small pieces of equipment. Nothing
23 major.

24 Q. Is there a typical practice with respect
25 to dental equipment in terms of the return, just

1 question.

2 THE WITNESS: Can you ask it a
3 different way or something?

4 Q. (By Mr. Gust) Well, earlier you had
5 testified that you didn't want to buy this until
6 after the first of the year. And my only question
7 was, is -- was that 90-day skip, was that
8 something that was thrown in for your benefit,
9 because the result would be you wouldn't have
10 payments until after the first of the year? Or do
11 you believe that that 90-day skip was part of the
12 standard satisfaction guarantee offered to
13 everybody?

14 A. I would have thought that would have been
15 the standard.

16 Q. Okay. As of the time that you got this
17 letter, had you had any other discussions with
18 Stephenson or anyone else at Patterson about what
19 the terms of Patterson financing were in terms of
20 the months -- you know, how many months it would
21 be, what the rates would be or anything like that?

22 A. The only thing I recall is Matt
23 Stephenson offering me two monthly payments. One
24 almost half of what the other one was for me to
25 choose from.

1 Q. And do you recall the timing of when you
2 had those discussions? In other words -- and if
3 you don't -- I mean, I realize this was a long
4 time ago.

5 Do you recall whether those discussions
6 were before or after you got this letter?

7 A. I don't recall. I would have expected it
8 after this letter, but I don't recall that.

9 Q. Do you recall how Mr. Stephenson
10 communicated to you the two different payments?
11 Was it e-mail, phone call, in person or something
12 else?

13 A. My recollection was in person.

14 Q. And so of the two payments, was -- were
15 they with two different financing companies?

16 A. I wasn't aware of that.

17 Q. Well, at some point, and we'll get to the
18 documents, you financed with Bank of America.
19 There -- there's -- you actually -- documents with
20 Bank of America, correct?

21 A. Now, say that part again.

22 Q. At some point -- and we'll get to the
23 documents. But at some point you executed
24 financing agreements with Bank of America,
25 correct?

1 Q. Would that have still been in the Fall of
2 2007?

3 A. I don't know. I believed it to be after
4 the first of the year, but I'm not certain.

5 Q. So was it possible for you to start using
6 the product before you went to basic training?

7 A. Yes, I did use the product before that.

8 Q. Okay. Now No. 4 is, "Perform 40 to 50
9 restorations in the mouth." Again, you've
10 produced some documents. I believe they indicate
11 that you did use it about 160 times. Does that
12 sound about right?

13 A. Roughly, yeah. I thought it was just
14 under 150, but it could have been 160.

15 Q. Okay. Well, the documents --

16 A. That's right.

17 Q. -- speak for itself.

18 A. Yeah.

19 Q. What is the rate on average? You know,
20 how many of these typically do you do in a month?
21 Is it -- I mean, I think you used it for 15 or 16
22 months according to your Discovery, and you've got
23 150 or 160, so is that on average about 10 a
24 month, typically?

25 A. You would think if you broke that down

1 average-wise, it would -- some were small, some
2 were -- in the month of January of 2008, I
3 believe, was the last time it was turned on for my
4 practice. And I did two crowns that month. So if
5 you want to say an average, and divide that up in
6 my head, but maybe 14 months divided by 150 would
7 be close to 10, little over 10, yes.

8 Q. And this product is -- you've used it on
9 all teeth. You use it on molars. Use it on front
10 teeth, is that right?

11 A. Most dentists, maybe only until recently,
12 feel confident enough using it on the front
13 teeth. Most of the time it was molars and
14 premolars.

15 Q. All right. Did you attend the advanced
16 training?

17 A. I did not.

18 Q. Was there a reason for that?

19 A. My practice was going through quite a bit
20 of transition at the time. And so thought it was
21 probably finding the time to get away for advanced
22 training.

23 Q. Did you have an understanding as to what
24 the normal timing was for advanced training? In
25 other words, did they usually try to do that

1 before, you know, you had done a certain number of
2 -- or was it wide open as far as you know?

3 A. My understanding would have been it's
4 wide open.

5 Q. And so did you feel as though you didn't
6 need the advanced training? I mean, I understand
7 you were busy, but did you -- what was your
8 feeling on whether or not you might learn more
9 things if you went to advanced training?

10 A. Like I said, I think it was more the time
11 committment and finding a time to be able to
12 attend.

13 Q. The sixth item says, "Make all of your
14 monthly payments on time." Did you ever have a
15 monthly payment that was due to Patterson
16 Financial?

17 A. That, I do not know.

18 Q. Do you recall signing documents with
19 Patterson Financial to finance with Patterson?

20 A. I don't -- I don't know if that was the
21 initial one, if I signed to purchase. I never
22 made a payment. It may have been the 90-day skip,
23 if I had something like that, and then Bank of
24 America took over, maybe. I'm not sure.

25 Q. Okay. Well, that was my -- my

1 five minutes.

2 (A brief recess was taken, after
3 which the following proceedings were
4 had:)

5 Q. (By Mr. Gust) We're looking at Exhibit
6 2. I believe you indicated you had some
7 discussions with Mr. Stephenson about, basically,
8 the 100 percent satisfaction guarantee. Is there
9 anything about those discussions that you remember
10 is any different from what's in here or does this
11 more or less incorporate what you recall him
12 saying about it?

13 A. Nothing really different. And we just
14 kept referring to it as the 100 percent
15 satisfaction guarantee.

16 Q. And did you have that discussion with
17 Mr. Hipson as well? Did he use that term?

18 A. I believe he did.

19 Q. And do you believe that prior to the time
20 that you signed this that someone had sort of
21 orally told you that, well, here's the terms or
22 something like that or -- and, again, if you don't
23 remember, that --

24 A. No.

25 Q. -- that's a fine answer.

1 MR. LOYD: Objection. That's not
2 what he testified to. He testified he didn't know
3 when it was signed.

4 Q. (By Mr. Gust) Well, I understand that you
5 don't know the date that it was signed, but
6 relative to when this Exhibit 2 was signed, do you
7 have a recollection as to whether or not those
8 were close together in time regardless of when it
9 was?

10 A. Is close together a couple of weeks apart
11 or something like that? I -- I don't -- I don't
12 know.

13 Q. Well, actually, this close together.
14 Within -- I mean, these appear to have been signed
15 within three days of each other. And that's all
16 I'm wondering. And if you have no recollection,
17 that's fine.

18 A. Yeah, I don't. I don't.

19 Q. If you look at No. 4 on the first page
20 under Delivery and Acceptance of Property, it
21 says, "The property has been delivered by seller
22 to buyer's address set forth above unless
23 otherwise noted." And I don't see anything
24 otherwise noted, so I'm wondering, as of the time
25 that you signed this, do you recall, had the

1 equipment been delivered?

2 A. I could probably look at the date of my
3 first crown that I put out and tell that, but I
4 don't -- I don't know exactly.

5 Q. Okay. Well, maybe we'll -- when we get
6 down to that.

7 A. Yeah.

8 Q. So you think that when it was delivered,
9 you used it almost instantly?

10 A. I would think that within a few days,
11 yes.

12 Q. Okay. And this also -- a little bit
13 above where I just asked you to read it says, "63
14 consecutive monthly payments." Do you see that?

15 A. I see that, yes.

16 Q. And so this -- under the original
17 financing agreement signed with Patterson Dental,
18 that provided for 63 monthly payments with a
19 three-month skip, is that right?

20 A. That's what that says there, yes.

21 Q. Well, is that different from your
22 recollection? I mean, I know you -- there's
23 another financing that occurred, but with respect
24 to this document, is that your understanding of
25 what it was going to be? 63 months?

1 A. That's correct.

2 Q. And so -- and is it one crown per block?

3 A. That's correct.

4 Q. So assuming they work out all right, that
5 allows you to basically make 45 crowns -- well, it
6 allows you to make 45 crowns. You may not end up
7 using all of them, but it allows you to make 45
8 crowns, is that right?

9 A. That's correct.

10 Q. So back to Exhibit 4. I see there is an
11 entry on the first page, "Marianne," somebody,
12 "October 25, 2007." Do you see that?

13 A. I do.

14 Q. So does that indicate that as of October
15 25th, anyway, you must have had the equipment?

16 A. That would be my understanding.

17 Q. And in glancing quickly through here, the
18 rest of the dates appear to be '08 or '09, but --
19 so I believe -- so Exhibit 3 was executed -- or
20 had a date on the top -- I'm sorry. It doesn't
21 have a date -- the signature -- it has a date on
22 the top of October 25th, 2007.

23 I had asked you if the equipment was in
24 place at the time you signed that. And you said
25 you'd have to look at your patient records. Is

1 And so about the time you take up -- and add some
2 staining to it and everything, it can be a couple
3 of hours.

4 Q. And by "learning curve is pretty steep,"
5 I'm not sure what you mean. Do you mean that
6 after you've done it long enough, you have to do
7 it a really long time before you get proficient at
8 it?

9 A. If you're conscientious and you're -- I
10 mean, you can do something for a long time without
11 conscientiously -- and not get any better at it.
12 But, yes, to get good at that, I believe it takes
13 a long time. It's a pretty good size learning
14 curve.

15 Q. And did you feel that you had gotten to
16 the top of the learning curve?

17 A. No.

18 Q. And, theoretically, if you are at the
19 point where you can do this in one visit instead
20 of two -- I know you testified that sometimes you
21 still did it in two visits, a temporary and
22 permanent. But if you get to that point, you've
23 eliminated, basically, an hour or two of chair
24 time, haven't you?

25 A. It's possible. The -- they change their

1 "Sorry for the delay. We've been out of control?"

2 A. I do not know.

3 Q. This document -- so this is your office's
4 fax coversheet and this is a fax cover sent to
5 Bank of America. Is that your understanding as
6 well?

7 A. That's my understanding, yes.

8 Q. Now, the documents appear to be Bank of
9 America documents. You know, they have Bank of
10 America heading or something on it. Is that your
11 understanding as well?

12 A. Yes, that's my understanding.

13 Q. Do you have any recollection of how the
14 Bank of America documents came to you? And by
15 "you," I mean Center for Exceptional Dentistry in
16 general?

17 A. How they came to me?

18 Q. Yeah. I mean, were they e-mailed? Were
19 they faxed? Were they regular mail?

20 A. I have -- I have no idea on that part.

21 Q. Okay. Do you -- and it is the case,
22 prior to this time, were you familiar with Bank of
23 America?

24 A. I mean, I know of it as -- yeah, they're
25 Bank of America. I'm familiar with the name.

1 Q. Okay.

2 A. And --

3 Q. But you knew that Bank of America and
4 Patterson were separate companies, correct?

5 A. I thought they had a dental division and
6 everything, so I thought I was financing through
7 the same thing is my recollection. I wasn't
8 thinking I was -- I just went for the lower
9 payment. And, evidently, that was the Bank of
10 America --

11 Q. Okay.

12 A. -- dental division.

13 Q. Okay. So you thought that Bank of
14 America had a dental division? Is that what
15 you're saying?

16 A. I just figured it was part of the
17 Patterson's financing is what I'm saying.

18 Q. I'm not sure what you mean by "part of
19 Patterson's financing."

20 A. Well, I was offered the two payments with
21 that guarantee was my belief in that. And so I
22 expected it was still part of Patterson's
23 financing program.

24 Q. So your belief was that Bank of America
25 was part of Patterson?

1 A. I thought they were part of Patterson's
2 financing program.

3 Q. Okay. So that they were -- I want to
4 make sure I understand what you mean by that. So
5 let me ask this question, which I think I asked
6 originally: You understood that they were
7 separate companies, correct?

8 A. Yes. I don't believe Bank of America and
9 Patterson is the same company.

10 Q. But your testimony is that you thought
11 that they had some sort of a built-in arrangement
12 that Bank of America had -- it was like the Bank
13 of America program offered by Patterson type of a
14 thing?

15 A. Right.

16 Q. Sort of like when you book an airline
17 ticket they try to get you into a hotel because
18 there's some sort of connection? That kind of
19 thing?

20 MR. LOYD: Objection to the form.

21 THE WITNESS: I don't understand that
22 part. I just know Matt offered me two different
23 payments --

24 Q. (By Mr. Gust) Did you have --

25 A. -- at the time of purchase. And I took

1 think it's 33,995. All right.

2 So, again, this isn't a document that,
3 you know, you prepared or you've seen before. But
4 does that -- do you recall someone from your
5 office, you or someone from your office, making an
6 inquiry about trade-in value? Trade-in date?

7 A. I don't recall that at all.

8 Q. Do you recall -- as I recall, you -- you
9 said you used this for -- just barely into
10 2009, is that correct?

11 A. No.

12 Q. Used it for --

13 A. Barely into 2008.

14 Q. Well --

15 A. I'm sorry, I'm sorry. You're correct. I
16 bought it at end of 2007. Barely into 2009.
17 That's correct.

18 Q. Okay. And then I believe in some of your
19 Discovery responses that we had been looking at
20 later, that you indicated at some time after you
21 stopped using it you made some sort of inquiry
22 about the satisfaction guarantee, the 100 percent
23 satisfaction guarantee. Do you recall
24 approximately when that was?

25 Particularly in relation to -- okay. We

1 know the date you stopped using it because of your
2 records. So that's early 2009.

3 A. Okay.

4 Q. Do you have a recollection as to when
5 that would have been?

6 A. I would have thought it would have been
7 the first half of 2009.

8 Q. Okay. Well, and that's why I was
9 wondering whether or not one of these entries
10 might have related to that. They don't mention
11 the 100 percent satisfaction guarantee, but there
12 is some sort of question in here about, you know,
13 the warranty and/or the trade-in amount, so -- but
14 you don't have any recollection of what's listed
15 in this document, Exhibit 8, is that correct?

16 A. I don't, no.

17 Q. What were the circumstances that you
18 talked to Matt Stephenson in this timeframe?

19 A. I contacted Matt Stephenson just to
20 discuss my options from here with my CEREC. And
21 he's the one that actually volunteered the
22 information like -- and he -- there was no -- we
23 had no time limit placed on that.

24 Q. What was the timing of that -- I mean,
25 was that after you'd stopped using the product?

1 A. It was after I'd stopped using the
2 product.

3 Q. And was it shortly after? I mean, was it
4 Winter of 2009?

5 A. I would still guess it's in the first
6 half of 2009.

7 Q. Did you call him up or run into him
8 somewhere?

9 A. I called him up.

10 Q. Was he still working at Patterson?

11 A. He was not.

12 Q. How did you locate him?

13 A. Actually, had his cell phone number. He
14 was -- he gave -- I figured he gave that to all of
15 his clients in case we had anything that we
16 needed.

17 Q. Oh, so you had his cell from when he did
18 work at Patterson?

19 A. That's correct. And called him thinking
20 he still worked there.

21 Q. At the time you stopped using the
22 machine, was there -- had you been sort of tailing
23 off using it and then just stopped or had you just
24 made a decision as of today I'm not going to use
25 it anymore? Was it kind of a cliff like that?

1 A. Mainly -- and Matt ended up just
2 indicating there just wasn't a time limit placed
3 upon that.

4 Q. So what -- do you remember specifically
5 words that you said or words that he said or is
6 your recollection just in general what he
7 communicated?

8 A. I remember pretty specifically that he
9 said that -- because, like I said, he offered up
10 that information. He said, "Andy, when I sold
11 that to you, there wasn't a time limit placed on
12 it." And he went on to say that, "Sirona is a
13 good company." He said, they'll -- "They like to
14 make their doctors happy. You know, follow
15 through with that and give you your money back."

16 Q. And Sirona is what he said?

17 A. Sirona.

18 Q. And who is that? Is that who makes the
19 CEREC?

20 A. That is the original manufacturer.

21 Q. Okay. So what he was telling you is that
22 Sirona would give you your money back?

23 A. He said Sirona was a good company and the
24 agreement that we had had no time limit on it.
25 And that I would receive my money back.

1 Q. So -- and by "your money back," what --
2 what did that mean to you? What were you going to
3 get back?

4 A. The way he claimed it there, it was like
5 the money that I spent to purchase the -- the
6 whole unit there.

7 Q. So you'd get all your money back?

8 A. That's what I was expecting after that
9 conversation.

10 Q. So your interpretation from that
11 discussion with Mr. Stephenson was that you could
12 use this machine as long as you wanted. You could
13 make as much money off it from billing your
14 patients and then you could just turn it back and
15 get all of your money back?

16 A. I thought that's what that guarantee was
17 about.

18 Q. Okay. Is that what you thought it was
19 when you signed it or is that what you thought it
20 was when you had this discussion with Matt
21 Stephenson?

22 MR. LOYD: Object to the form of the
23 question.

24 THE WITNESS: I don't know. I
25 thought when I -- when I signed it there, I just

1 though I had a no-lose situation like they
2 presented to me. And when I went ahead and
3 accepted the unit, that I would get to try it and
4 receive my money back if I didn't like it.

5 Q. (By Mr. Gust) And -- but no matter when
6 you didn't like it?

7 A. Yeah, there wasn't a time limit on it.

8 Q. Okay. So your understanding of the
9 agreement as of the time you signed it was that
10 you could use this for as long as you wanted, make
11 as much money off it as you could, and then just
12 turn it over and get all your money back?

13 I'm sorry, is that a "yes?"

14 A. That -- that was my understanding on it,
15 that I could use -- I didn't -- I didn't have any
16 other thing to believe on that.

17 Q. Okay. And so when you had this
18 discussion, this later discussion with
19 Mr. Stephenson, he said basically the same thing
20 as what your original understanding had been?

21 A. That's what he said.

22 Q. Do you remember anything else that he
23 said?

24 A. I don't remember anything else.

25 Q. I believe from looking at the other

1 documents, that you, then, contacted somebody else
2 at Patterson in Oklahoma City, is that correct?

3 A. Uh-huh.

4 Q. That's a "yes?"

5 A. Yes. I'm sorry, yeah.

6 Q. Did you recall who that person was?

7 A. I believe it was the person that took
8 Matt's place. And Brian, I don't know his last
9 name. Brian.

10 Q. So he was basically the sales rep?

11 A. I'm not sure his title.

12 Q. Okay. Well, do you know what Matt's
13 title was?

14 A. No. I figured he was sales rep.

15 Q. Okay.

16 A. And so if --

17 Q. So the person that you spoke to, did you
18 speak to them on the phone or otherwise?

19 A. I believe on the phone. I'm not certain.

20 Q. What do you -- and that occurred in this
21 sort of same timeframe right after you talked to
22 Matt?

23 A. Close in that timeframe, I believe.

24 Q. Okay. And so just to make sure I
25 understand, you stopped using it in January of

1 2009, but you might have waited as many as six
2 months before you called Matt Stephenson?

3 A. I don't know how many months in between
4 there.

5 Q. Okay. Well, you said it was the first
6 half of 2009.

7 A. Yeah.

8 Q. You said that a couple times. And that's
9 fine.

10 A. Yeah.

11 Q. I'm just trying to figure out why you
12 would have waited six -- why would you even wait
13 six months?

14 A. Yeah. I don't know if it was the back
15 half. I just know it was in the first half of
16 that. And I would have thought it probably would
17 have been midway in between there, but I do not
18 know that.

19 Q. So what do you recall the person at
20 Patterson saying when you called about the
21 satisfaction guarantee?

22 A. That he said I could not return it.

23 Q. And do you recall specific words or just
24 remember sort of the content, the general --

25 A. You know, I don't remember if those were

1 any discussion about it having trade-in value or
2 it having a depreciated value or anything else?

3 A. No discussion that I recall.

4 Q. So, at that point in time, did you take
5 any other action? Explore any other options as to
6 what to do with the equipment?

7 A. Not at that point in time. I just --

8 Q. Prior to initiating this litigation, did
9 you do anything else in terms of, you know, trying
10 to sell it or license it to somebody or anything?

11 A. No.

12 Q. So you just -- you continued to make your
13 monthly payments to Bank of America, correct?

14 A. That's correct.

15 Q. And there's about, what, four years left
16 on that?

17 A. If I purchased it in --

18 MR. LOYD: Documents speaks for
19 itself, Counsel.

20 THE WITNESS: Yeah, I'm not sure. I
21 was trying to do the math, but --

22 (Deposition Exhibit No. 9 marked for
23 identification.)

24 Q. (By Mr. Gust) I show you what we've
25 marked as Exhibit 9. Ask you if you recognize

1 A. Yes, that's true.

2 Q. Did you -- have you purchased one of the
3 competitor's products?

4 A. I have not.

5 Q. How is it -- when did you come into
6 possession of this? Was this when they were
7 trying to sell it to you or some other time?

8 A. I'd inquired of that, but I was voicing
9 just the disappointment in the upgrades and the
10 true cost of staying up with CEREC. And so when
11 they -- when my reps told some of those figures, I
12 said, "Oh, I'd like to see something like that"
13 and if would save me some research on that, so --

14 Q. So can you give me a timeframe of when
15 you had that discussion? Was it part of this
16 litigation or was it four years ago when you
17 stopped using it or something else?

18 A. I doubt it was four years ago because the
19 OmniCAM came out in 2012. So I don't recall when.

20 Q. So was that part of your dissatisfaction
21 with this CEREC, was that the -- the cost of the
22 upgrades?

23 A. The number one thing was the quality of
24 the fit for me. And we just have had a reputation
25 of excellence in the area of crown and bridge. We

1 focus highly on that. And quality of fit is the
2 major concern. So quality was part of the
3 dissatisfaction, but this played a part of also.
4 I was told in the beginning that upgrades would be
5 minimal to stay up with the current technology
6 with CEREC.

7 THE WITNESS: Can I run to the
8 bathroom real quick?

9 MR. GUST: You sure can.

10 (A brief recess was taken, after which
11 the following proceedings were had:)

12 Q. (By Mr. Gust) You had said just before
13 the break something about what you'd been told
14 about upgrade costs. What do you remember? Who
15 do you remember spoke to you about what the CEREC
16 upgrade costs were going to be?

17 A. I just remember Matt discussing that.
18 That one of the benefits and what CEREC was doing
19 that upgrades would be minimal to stay up with the
20 times.

21 Q. And was there any sort of specific
22 representation as to what the upgrades had been in
23 the past?

24 A. No, not that I recall.

25 Q. And do you recall -- did he tell you that

1 Q. And do you have any sense, you know, from
2 your -- either what you read or talking to other
3 dentists or whatnot, what other people's
4 experience with the CEREC? Or is your just -- you
5 just base it on your own experience?

6 A. No, you hear, you know, through the
7 grapevine if other people have owned them or not.
8 And so I think that would be interesting
9 information for research to see the satisfaction
10 with --

11 Q. And have you researched that? Have you
12 found out the satisfaction levels of other
13 dentists?

14 A. I've inquired a little bit, not
15 extensively.

16 Q. What have you found?

17 A. I found that there's -- that it goes both
18 ways. There's a number that are dissatisfied and
19 some that returned theirs; and some that use them
20 both for front teeth and back teeth with the new
21 generation.

22 Q. Do you know of anyone in particular that
23 has had a CEREC that they've returned?

24 A. I had heard of Scott Waugh that returned
25 his.

1 A. I wanted to keep it current. And that
2 would be a -- you know, a reason for, hey, we've
3 maintained this well, but I'm ready to return to
4 it. Because Matt had confirmed to me that that
5 was the agreement. It had no time limit on it.

6 Q. I understand that. But after that,
7 someone who actually worked at Patterson at the
8 time told you the opposite, didn't they?

9 A. He did. But, in my opinion, my agreement
10 was with Matt. And Brian didn't know the
11 particulars of -- of how I was going to wait -- he
12 ordered it for me anticipating that I would do
13 it. And then I had nothing to lose with the --
14 with the guarantee. So I didn't expect Brian to
15 relate to that, but --

16 Q. So it was your position that you could
17 just wait as long as you want and then decide to
18 return it?

19 A. Yeah. We were in some big transition at
20 the office. And so I had a lot on my plate in
21 dealing with -- with the office during those
22 years --

23 Q. Well, but every month you were paying out
24 -- what's your payment to Bank of America?

25 A. Maybe 1,300, 1,400. I don't know, 12 to

1 14, somewhere.

2 Q. And then you're making a payment to the
3 CEREC Club?

4 A. That's correct.

5 Q. So every month you were paying out
6 \$1,500 --

7 A. That's correct.

8 Q. -- approximately?

9 Was there something -- was there some
10 reason that after three years, approximately, that
11 you, then, decided to do something?

12 A. You know, like I said, we had a lot going
13 on in the practice. The loss of two associates.
14 We were a three-doctor practice. I had two
15 associates at the time. And so we were going
16 through a whole lot of transition over a period of
17 time, just protecting the practice, for one, with
18 the letters of solicitation, protecting jobs.

19 And so part of that off and on throughout
20 that time period, I searched for my contract. And
21 my wife is really usually pretty good about having
22 those all in one place. And I was cleaning out my
23 upstairs and found my contract with some of the
24 owner's manuals. And so when I saw that, I asked
25 Mr. Loyd to take a peek at it and review it with

1 Q. Okay. So -- and is there a time of year
2 when the upgrades come out or is that variable?

3 A. Not to my knowledge. I would think it
4 would be variable. But Patterson and Sirona might
5 have -- they might like an early-in-the-year
6 launch.

7 Q. Well, had the upgrade come out prior to
8 the time you stopped using the CEREC machine?

9 A. In my recollection, no, it had not.

10 Q. So you -- you stopped using in 2009 and
11 then there was an update that became available?

12 A. After that, is what my recollection is.

13 Q. Okay. So at the time you stopped using
14 it, how would you have known how much it was going
15 to cost for the upgrade?

16 A. I didn't. I think that might be one of
17 our inquiries, you know -- you know, for that. It
18 showed on the Patterson's thing that you said that
19 I wouldn't be aware of that piece of paper. So we
20 probably just inquired after we heard it was -- it
21 was out.

22 Q. Okay. Because you had stopped using it,
23 but maybe you'd start?

24 A. No -- well, if -- if an upgrade would
25 have improved the quality, I might have revisited

1 Q. And when you said, "set up the
2 situation," do you know -- I mean, can you tell me
3 what he did?

4 A. I can't tell you whether he had, you
5 know, contact information. I don't remember.

6 Q. So you don't remember him providing you
7 with bank documents -- or, I mean, he didn't have
8 a stack of Bank of America forms in his briefcase
9 or something, did he? Or did he --

10 A. I don't recall that, no.

11 Q. A little further down in this paragraph
12 it says -- I'm in the fourth line starting in the
13 middle, "Plaintiff believes Bank of America paid
14 proceeds of the express loan directly to the
15 defendant." Do you see that?

16 A. I do.

17 Q. So your understanding is that Patterson
18 was paid off by Bank of America and -- is that
19 correct?

20 A. If that's the initial -- according to
21 that earlier document we looked at, if the 90-day
22 went through the other -- through Patterson, that
23 this paid that off, yes.

24 Q. So as far as you know, Patterson isn't
25 owed anything at this time with respect to the

1 loan by you?

2 A. I wouldn't expect with my balance being
3 all Bank of America.

4 Q. Did you ever get a document from
5 Patterson showing, you know, the, sort of, closing
6 out -- the first -- the 63-month document?

7 A. Not that I recall or -- or remember
8 receiving.

9 Q. Then it says, "Other than the signing of
10 the documents to Bank of America, this loan was
11 procured and handled by the Defendant." Do you
12 see that?

13 A. Uh-huh.

14 Q. That's a "yes?"

15 A. Yes. Sorry about that.

16 Q. Can you tell me what it was that
17 Patterson did that you referred to as "procured
18 and handled."

19 A. I guess it was just offered to me and
20 then set up the arrangements through the dental
21 division at Bank of America was my understanding.

22 Q. Do you remember, though, how -- what the
23 contact was? I understand you've told me that
24 Mr. Stephenson advised you that you could do this
25 payment or this payment. But what I'm wondering

1 C E R T I F I C A T E

2

3 STATE OF OKLAHOMA)

4)SS:

5 COUNTY OF OKLAHOMA)

6

7 I, Chrystal H. Vance, a certified
8 shorthand reporter within and for the State of
9 Oklahoma, certify that J. ANDREW MCKAMIE, DDS, was
10 sworn to testify the truth; that the deposition
11 was taken by me in stenotype and thereafter
12 transcribed by computer and is a true and correct
13 transcript of the testimony of the witness; that
14 the deposition was taken on September 13, 2013 at
15 9:04 a.m. at 100 North Broadway, Oklahoma City,
16 Oklahoma; that I am not an attorney for or a
17 relative of either party, or otherwise interested
18 in this action.

19 Witness my hand and seal of office on
20 October 3, 2013.

21

22

23 Chrystal H. Vance, CSR

24 For the State of Oklahoma

25 CSR #1819